

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Amendment of the Commission's Policies and ) IB Docket No. 06-160
Rules for Processing Applications in the )
Direct Broadcast Satellite Service )
)

SECOND NOTICE OF PROPOSED RULEMAKING

Adopted: November 9, 2018

Released: November 13, 2018

Comment Date: (45 days after date of publication in the Federal Register).

Reply Comment Date: (75 days after date of publication in the Federal Register).

By the Commission:

I. INTRODUCTION

1. In this Second Notice of Proposed Rulemaking (Second Notice), we invite comment on proposed revisions to our procedures and rules governing direct broadcast satellite (DBS) service using satellites in geostationary orbit (GSO).1 These proposals would, to the extent applicable, align DBS processing procedures with our recently streamlined processing procedures for GSO fixed-satellite service (FSS)2 satellites and take into account changes in the regulations and provision of satellite communications services since the Commission last examined the licensing provisions for DBS over a decade ago. This Second Notice is a step towards increased use of spectrum and orbital resources, while seeking to protect existing consumers of satellite television from harmful interference to their service.

II. BACKGROUND

2. The DBS service uses satellites to transmit video programming directly to the public, who receive the programming using "dish" antennas affixed to dwellings or other structures. In the United States, DBS is the principal means of delivering video services by satellite, with DBS operators DIRECTV and DISH Network serving over 33 million subscribers, combined.3 Although DBS is the

1 The DBS service is a radiocommunication service in which signals transmitted or retransmitted by space stations in the 12.2-12.7 GHz frequency band are intended for direct reception by the general public. 47 CFR § 25.103. DBS is the term used in the United States to describe the domestic implementation of the international Broadcasting Satellite Service (BSS) in the 12.2-12.7 GHz frequency bands. BSS is the international term used for a radiocommunication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public. See, e.g., 47 CFR § 2.1.

2 Fixed-satellite service is "a radiocommunication service between earth stations at given positions, when one or more satellites are used; the given position may be a specified fixed point or any fixed point within specified areas; in some cases this service includes satellite-to-satellite links, which may also be operated in the inter-satellite service; the Fixed-Satellite Service may also include feeder links of other space radiocommunication services." 47 CFR § 25.103.

3 According to the most recent report on competition in the market for the delivery of video programming, at the end of 2015 DIRECTV had 19,784,000 subscribers and DISH Network had 13,359,000. Annual Assessment of the (continued....)

principal means of delivering satellite television to the American public, other satellite services currently exist that are capable of providing such service as well, including FSS direct-to-home (DTH) service, which can be provided as a sub-category of FSS in frequency bands used for FSS operations, and “reverse band 17/24 GHz BSS,” which can provide programming to customers in the United States in the same 17.3-17.7 GHz frequency band used for feeder link transmissions from the Earth to DBS satellites.<sup>4</sup>

3. Although DBS operations are similar to those of GSO satellite networks in the FSS, consumer preference for small antennas results in DBS satellites requiring greater separation in orbit in order to avoid interference to each other. Whereas satellites in the GSO FSS can be typically located at two degrees from each other in the geostationary orbit and still provide service in the same frequency band and same geographic area, DBS satellite networks serving the United States have been designed to be no closer than nine degrees apart in orbit in order to provide service under the same circumstances. Unlike the case for spectrum and orbital resources used by most GSO FSS operations, the spectrum and orbital resources for DBS is subject to planned use, on a regional basis, under the international regulations administered by the International Telecommunication Union (ITU).<sup>5</sup> Under this plan, the United States is assigned eight orbital locations for the provision of DBS, spaced at least nine degrees: 61.5° West Longitude (W.L.), 101° W.L., 110° W.L., 119° W.L., 148° W.L., 157° W.L., 166° W.L., and 175° W.L.

4. In recent years, the Commission has taken significant steps to streamline the licensing process for the satellite services that it regulates. For example, in 2015, the Commission adopted comprehensive changes to its rules in Part 25 that govern the licensing and operation of space and earth stations for the provision of satellite communications services.<sup>6</sup> These streamlining initiatives, however, did not propose or adopt any changes to the way that DBS service is licensed or regulated.

5. The Commission last proposed changes to the DBS licensing regime in a 2006 Notice of Proposed Rulemaking, where the Commission proposed to grant requests to provide DBS service in the United States on a “first-come, first-served” basis, rather than through competitive bidding (that is, through auctions).<sup>7</sup> Before that NPRM, the Commission had adopted rules to auction DBS licenses, but the U.S. Court of Appeals for the District of Columbia Circuit in *Northpoint Technology, Ltd. and Compass Systems, Inc. v. Federal Communications Commission (Northpoint)*<sup>8</sup> held, in relevant part, that

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*Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, 32 FCC Rcd 568, 596 at Table III.A.5 (MVPD Video Subscribers) (MB 2017) (*18<sup>th</sup> Annual MPVD Competition Report*).

<sup>4</sup> See *Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, First Report and Order and Second Notice of Proposed Rulemaking, 22 FCC Rcd 8842 (2007).

<sup>5</sup> The history of DBS in the United States and its international regulation has previously been discussed in this proceeding and will not be repeated here. The provisions of Appendices 30 and 30A of the International Radio Regulations are applicable to the BSS (that is, DBS in the United States) in the frequency bands 11.7-12.2 GHz (Region 3), 11.7-12.5 GHz (Region 1) and 12.2-12.7 GHz (Region 2), and to their associated feeder links in the bands 14.5-14.8 GHz and 17.3-18.1 GHz (Regions 1 and 3) and 17.3-17.8 GHz (Region 2). ITU Region 2 includes North, Central, and South America, and Greenland. See Article 5, Section 1 of the ITU Radio Regulations.

<sup>6</sup> *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713 (2015) (*Part 25 Streamlining Order*).

<sup>7</sup> *Amendment of the Commission’s Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service; Feasibility of Reduced Orbital Spacing for Provision of Direct Broadcast Satellite Service in the United States*, Notice of Proposed Rulemaking, 21 FCC Rcd 9443 (2006) (*2006 Notice*).

<sup>8</sup> *Northpoint Technology, Ltd. and Compass Systems, Inc. v. Federal Communications Commission*, 412 F.3d 145 (continued....)

the ORBIT Act prohibited such an auction.<sup>9</sup> Because the processing procedures for DBS service at the time solely assigned licenses by auctions, the *Northpoint* decision resulted in an absence of a procedure for processing requests for DBS, which prevented the Commission from considering requests to provide new DBS service. Consequently, requests for new DBS service have been subject to a “freeze” since December 2005.<sup>10</sup>

### III. DISCUSSION

6. We believe the public interest would be well served by updating our rules governing the processing and regulation of the DBS service to match the streamlined rules that apply to requests to provide GSO FSS, keeping in mind the need to protect existing DBS subscribers from harmful interference to their service. Given changes since 2006 to the “first-come, first-served” procedures, and to the way that commercial satellite services are provided, we believe it important to seek additional comment before adopting new rules governing DBS.<sup>11</sup>

7. Accordingly, we seek additional comment on the following proposals and tentative conclusions: (1) processing requests to provide DBS on a first-come, first-served basis, taking into account the changes to Part 25 adopted in 2015; (2) extension of the license term for DBS to 15 years to match the terms of GSO FSS licenses; and (3) declining to adopt additional rules for processing requests for new DBS systems at orbital locations less than nine degrees apart. We also propose to lift the freeze on requests to use spectrum and orbital resources to provide DBS in the United States after adoption of processing procedures for such requests.

#### A. License Application Processing Procedures

8. We seek comment on proposed rules for processing requests to provide new DBS service to U.S. consumers. These rules would apply to any future request to provide DBS service to the United States using the 12.2-12.7 GHz band (space-to-Earth) and associated feeder links in the 17.3-17.8 GHz band (Earth-to-space), including channels not currently licensed at orbit locations assigned to the United States under the International Telecommunication Union (ITU) Region 2 BSS and feeder-link Plans (Region 2 Plan), as well as DBS service from space stations located at orbital locations not assigned to the United States in the ITU Region 2 BSS and feeder-link Plans.

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(D.C. Cir. 2005) (*Northpoint*). We do not repeat the procedural history leading to the decision in *Northpoint* and subsequent actions by the Commission in response to this decision, which has already been set forth in detail in this proceeding. *2006 Notice*, 21 FCC Rcd at 9446-48, paras. 7-12.

<sup>9</sup> See *2006 Notice*, 21 FCC Rcd at 9449, para. 10 (citing *Northpoint*, 412 F.3d at 156); Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), as amended, Pub. L. No. 107-233, 116 Stat. 1480 (2002), as amended, Pub. L. No. 108-228, 118 Stat. 644 (2004), as amended, Pub. L. No. 108-371, 118 Stat. 1752 (2004), as amended, Pub. L. No. 109-34, 119 Stat. 377 (2005). The ORBIT Act amended the Satellite Communications Act of 1962, 47 U.S.C. § 701 *et seq.* (Satellite Act), and is *codified at* 47 U.S.C. § 761 *et seq.* Section 647 of the ORBIT Act states that “[n]otwithstanding any other provision of law, the Commission shall not have the authority to assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services. The President shall oppose in the International Telecommunication Union and in other bilateral and multilateral fora any assignment by competitive bidding of orbital locations or spectrum used for the provision of such services.” See 47 U.S.C. § 765(f).

<sup>10</sup> Direct Broadcast Satellite Service Auction Nullified: Commission Sets Forth Refund Procedures for Auction No. 52 Winning Bidders and Adopts a Freeze on All New DBS Service Applications, *Public Notice*, FCC 05-213 (rel. Dec. 21, 2005) (*DBS Applications Freeze*).

<sup>11</sup> We note the *2006 Notice* already proposed to extend to DBS the same “first-come, first-served” processing procedure that applies to GSO FSS. *2006 Notice*, 21 FCC Rcd at 9455-56, paras. 23-26.

### 1. First-Come, First-Served Application Process

9. Consistent with the Commission's prior proposal in the *2006 Notice*,<sup>12</sup> we propose to treat requests to provide DBS using a "first-come, first-served" licensing approach used for GSO-like<sup>13</sup> FSS and to eliminate DBS competitive bidding procedures.<sup>14</sup> We observe that the *2006 Notice* specifically sought comment on whether, pursuant to Section 309(j) of the Communications Act, and in light of the *Northpoint* case, the Commission could design a competitive bidding system, or auction, to assign mutually exclusive applications for DBS licenses or spectrum.<sup>15</sup> Commenters overwhelmingly supported use of "first-come, first-served," procedures for DBS and no commenter suggested how the Commission could design a competitive bidding system under Section 309(j).<sup>16</sup> Accordingly, based on the court holding in *Northpoint* and the record in response to the *2006 Notice*, we conclude that DBS licenses cannot be auctioned at this time.

10. The Commission adopted a "first-come, first-served" procedure for "GSO-like" FSS space station operation in 2003,<sup>17</sup> but specifically did not apply this procedure to applications for DBS service.<sup>18</sup> Under the "first-come, first-served" procedure, applications for new U.S.-licensed space station operation, and requests for new U.S. market access via non-U.S. licensed space station operation, are placed in a single processing "queue" in the order in which they are filed.<sup>19</sup> The Commission would grant the first-in-line application if the operation it proposes is compatible with authorized space station operations and the applicant is otherwise qualified, and the Commission would dismiss later-filed space station applications that are incompatible with the newly authorized space station operation.<sup>20</sup>

11. We seek further comment on this proposal. DBS is similar to GSO FSS, except for certain technical features required to protect DBS consumers from interference while using small receive-only antennas, and therefore DBS seems well suited to using the same processing procedure as used for GSO FSS. As noted above, comments received in response to the *2006 Notice* overwhelmingly supported

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<sup>12</sup> *2006 Notice*, 21 FCC Rcd at 9455, para. 23.

<sup>13</sup> See 47 CFR § 25.158 (Consideration of applications for GSO-like satellite operation.) The term "GSO-like" means operation of a GSO satellite to communicate with earth stations with directional antennas. *Id.* at § 25.158(a).

<sup>14</sup> Under this proposal, we would eliminate the competitive bidding and long form application requirements of the current DBS licensing provisions contained in Section 25.148(d) and (e) of the Commission's rules, 47 CFR §§ 25.148(d) and (e).

<sup>15</sup> See *2006 Notice* at paras. 20, 25 (sought comment on whether the Commission could conduct an auction for all DBS satellites in the 12.2-12.7 GHz service bands consistent with the *Northpoint* ruling and, if so, how such an auction would be implemented).

<sup>16</sup> See SES Americom Comments at 20-21 (in light of the *Northpoint* decision, the Commission should not attempt to reinstate auctions for U.S. DBS licenses and certainly cannot extend the use of auctions to requests for U.S. market access from foreign orbital locations. SES Americom and other applicants seeking authority for new DBS systems propose international services . . . ." "The Commission has granted requests for use of foreign DBS locations to serve the U.S. without conducting auctions in the past, and there is no conceivable rationale for departing from that precedent . . .").

<sup>17</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760 (2003) (*Space Station Licensing Reform Order*).

<sup>18</sup> *Space Station Licensing Reform Order*, 18 FCC Rcd at 10765, para. 3 n.4 ("In this proceeding, we consider revisions to the procedure for all new satellite license applications except for Direct Broadcast Satellite (DBS) and Digital Audio Radio Satellite (DARS) licenses.").

<sup>19</sup> *Id.* at 10805, para. 109.

<sup>20</sup> *Id.* at 10805, para. 110; 47 CFR § 25.155(a).

use of “first-come, first-served” procedures for DBS.<sup>21</sup> The 2006 *Notice* observed that the Commission’s experience with the “first-come, first-served” approach indicates that this procedure would also allow the quick issuance of DBS licenses and grants of U.S. market access, while still accommodating existing or new competitive systems in the same spectrum, and that this procedure would give applicants flexibility to design systems that will best serve their targeted customers.<sup>22</sup> We seek comment on whether experience since the 2006 *Notice* reinforces or changes these assessments of the suitability of the proposed “first-come, first-served” procedure for processing requests to provide DBS services.

## 2. Application Processing Framework

12. If we adopt the proposal to process requests to provide new DBS service according to a “first-come, first-served,” we propose to apply the streamlined procedures the Commission recently adopted for FSS space stations in the *Part 25 Streamlining Order*.<sup>23</sup> We discuss the applicability of these procedures to requests to provide DBS in detail below.

### a. Filing Requirements

13. We propose that applications for authority to construct, deploy and operate a space station to provide DBS service, or requests for U.S. market access to provide DBS service to earth stations in the United States using a non-U.S. licensed space station under Section 25.137 of the Commission’s rules,<sup>24</sup> must provide the technical information required by Section 25.114 of the Commission’s rules.<sup>25</sup> Of particular applicability to DBS service, the following technical information must be provided under Section 25.114: (1) whether the space station is to be operated on a broadcast or non-broadcast basis;<sup>26</sup> and (2) information and analyses in the event that the technical characteristics of the proposed system differ from those in the Appendix 30 BSS Plans, the Appendix 30A feeder link Plans, Annex 5 to Appendix 30 or Annex 3 to Appendix 30A of the ITU Radio Regulations.<sup>27</sup>

14. We seek comment on this proposal and whether Section 25.114 should be amended to eliminate any of these DBS-specific requirements or to require any additional information relevant to the provision of DBS service. We also propose to apply the existing provisions of Section 25.112 to determine whether a request to provide DBS service in the United States is acceptable for filing and seek comment on this proposal.<sup>28</sup>

### b. Milestone and Bond

15. We propose to apply Sections 25.164 (Milestones) and 25.165 (Surety Bonds) to authorizations and grants of U.S. market access to provide DBS service.<sup>29</sup> The Commission’s milestone and bond requirements are intended to deter warehousing by satellite operators before a proposed space station has been launched and begun operations.<sup>30</sup> In this instance, warehousing refers to the retention of

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<sup>21</sup> See, e.g., Government of Bermuda Department of Telecommunications 2006 Comments at 2; SES 2006 Comments at 20-21, SES 2007 Reply at 27-18.

<sup>22</sup> 2006 *Notice*, 21 FCC Rcd at 9455, para. 24.

<sup>23</sup> See *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713 (2015) (*Part 25 Streamlining Order*).

<sup>24</sup> 47 CFR § 25.137 (Requests for U.S. market access through non-U.S.-licensed space stations).

<sup>25</sup> 47 CFR § 25.114 (Applications for space station authorizations).

<sup>26</sup> 47 CFR § 25.114(d)(11).

<sup>27</sup> 47 CFR § 25.114(d)(13).

<sup>28</sup> 47 CFR § 25.112 (Dismissal and return of applications).

<sup>29</sup> 47 CFR §§ 25.164 and 25.165.

<sup>30</sup> It has been a longstanding Commission policy to impose milestone schedules for system implementation in  
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preemptive rights to use spectrum and orbital resources by an entity that does not intend to bear the cost and risk of constructing, launching, and operating an authorized space station, is not fully committed to doing so, or finds out after accepting the license that it is unable to fulfill the associated obligations.<sup>31</sup> Such milestone requirements extend not only to U.S. licensees, but also to operators of non-U.S. licensed space stations that have been granted access to the U.S. market.<sup>32</sup>

16. In 2015, the Commission substantially streamlined the milestone and bond provisions contained in Sections 25.164 and 25.165 of the Commission rules.<sup>33</sup> Specifically, the Commission eliminated all of the space station construction milestones, except the requirements to bring a space station into operation at the assigned location within a specified period of time.<sup>34</sup> Also, in order to provide better incentives against spectrum warehousing, the Commission modified the space station bond requirement to increase liability over time.<sup>35</sup>

17. We propose to extend these streamlined milestone and bond provisions to DBS services. Currently, the milestone and bond provisions of Sections 25.164 and 25.165 explicitly do not apply to DBS service.<sup>36</sup> Instead, DBS authorizations are subject to analogous, but different, due diligence requirements contained in Section 25.148(b) of the Commission's rules.<sup>37</sup> Because we are proposing to treat requests for DBS service in substantially the same manner as we treat requests for GSO FSS, we propose to eliminate the due diligence requirements contained in Section 25.148(b) and replace them with a requirement to comply with the milestone and bond provisions of Section 25.164 and 25.165. We seek comment on this proposal.

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satellite licenses. See *Inquiry into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference*, Report and Order, 90 FCC 2d 676, 719, para. 114 (1982); *MCI Communications Corporation, Application for Extensions of Time to Construct and Launch Space Stations in the Domestic Fixed-Satellite Service*, Memorandum Opinion and Order, 2 FCC Rcd 233, 233, para. 5 (Com. Car. Bur. 1987); *Norris Satellite Communications, Inc., Application for Review of Order Denying Extension of Time to Construct and Launch Ka-Band Satellite System*, Memorandum Opinion and Order, 12 FCC Rcd 22299 (1997); *Morning Star Satellite Company, L.L.C., Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service at Orbital Locations 62° W.L., 30° E.L., 107.5° E.L., and 147° W.L.*, Memorandum Opinion and Order, 16 FCC Rcd 11550 (2001). In 2003, the Commission codified standard milestone requirements for U.S. space station licensees and for non-U.S. licensed space station operators granted access to the U.S. market. See *Space Station Licensing Reform Order*, 18 FCC Rcd at 10827-38, 10875, paras. 173-208, 310-312.

<sup>31</sup> See, e.g., *TMI Communications and Company, Limited Partnership and TerreStar Networks Inc., Application for Review and Request for Stay*, Memorandum Opinion and Order, 19 FCC Rcd 12603, 12604, ¶ 2 (2004); *PanAmSat Licensee Corp., Application for Authority to Construct, Launch, and Operate a Ka-Band Communications Satellite System in the Fixed-Satellite Service at Orbital Locations 58° W.L. and 125° W.L.*, Memorandum Opinion and Order, 16 FCC Rcd 11534, 11537-38, para. 12 (2001).

<sup>32</sup> 47 CFR § 25.137(d)(1).

<sup>33</sup> *Part 25 Streamlining Order*, 30 FCC Rcd at 14716, para. 3.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> 47 CFR §§ 25.164(a) and 25.165(a).

<sup>37</sup> 47 CFR § 25.148(b) (“*Due diligence.* (1) All persons granted DBS authorizations shall proceed with due diligence in constructing DBS systems. Permittees shall be required to complete contracting for construction of the satellite station(s) within one year of the grant of the authorization. The satellite stations shall also be required to be in operation within six years of the authorization grant.”).

**c. License Term**

18. We propose to extend the license term for DBS space stations not licensed as broadcast facilities to 15 years from the current term of 10 years. Currently, licenses for DBS space stations licensed as broadcast facilities are issued for a period of 8 years, and licenses for DBS space stations not licensed as broadcast facilities are issued for 10 years.<sup>38</sup> The 8-year term for broadcast stations is established by the Communications Act.<sup>39</sup> In 1995, the Commission extended the term of non-broadcast DBS licenses from 5 to 10 years, the maximum term then allowed by the Communications Act, and “which better reflect[ed] the useful life of a DBS satellite.”<sup>40</sup> Because all DBS licensees offer subscription services, all existing DBS operators are classified as non-broadcast licensees and their license terms were extended to 10 years.<sup>41</sup> Subsequently, the Telecommunications Act of 1996 granted the Commission authority to establish license terms longer than 10 years for non-broadcast stations.<sup>42</sup>

19. We believe that issuing non-broadcast DBS space station licenses for 15 years would better reflect the useful life of new DBS satellites, as our extension of the license term for such DBS space stations from 5 to 10 years did in 1995. There are no technical or engineering considerations that render the operating life of a DBS satellite shorter than the operating life of a non-DBS satellite, such as those used to provide GSO FSS, and DBS satellites generally are able to provide service beyond their initial 10-year license terms. It would also make DBS space station license terms consistent with the terms of most other space stations.<sup>43</sup> We request comment on our proposal as well as any alternative license term proposals.

**d. Optional Two-Step FCC/ITU License Application Process**

20. The Commission adopted an optional two-step application process for GSO FSS applicants in 2015.<sup>44</sup> Under that two-step application process, an applicant for a GSO FSS license using frequencies in “unplanned” bands must submit a draft Coordination Request filing to the Commission using a simplified application form – Form 312 (Main Form) – pay the full license application fee, and post a \$500,000 bond in order to establish and perfect a queue position.<sup>45</sup> This first-step application submission establishes a place in the space station application processing queue as of the time of filing of the simplified Form 312 with the Commission.<sup>46</sup> As a second step, the prospective licensee must file a complete license application within two years of submission of the Coordination Request materials or forfeit the value of the bond and lose the queue status gained by the prior Coordination Request filing.<sup>47</sup>

<sup>38</sup> 47 CFR § 25.121 (a)(1) and (2).

<sup>39</sup> See 47 U.S.C. § 307(c)(1)

<sup>40</sup> 2006 Notice, 21 FCC Rcd at 9464, para. 51 (citing *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, Report and Order, 11 FCC Rcd 9712 at paras. 129-30 (1995)).

<sup>41</sup> The Commission has determined that subscriber-based DBS is not “broadcasting” for the purposes of the Communications Act. See *Subscription Video*, GN Docket No. 85-305, Report and Order, 2 FCC Rcd 1001, 1006 at para. 42 (1987) (upheld in *Nat’l Ass’n For Better Broadcasting v. FCC*, 849 F.2d 665, 669 (D.C. Circuit 1988)).

<sup>42</sup> Telecommunications Act of 1996, [Pub. L. No. 104-104, Title II, § 203](#), 110 Stat. 56, 112 (1996) (amending Section 307 of the Communications Act to eliminate ten-year term and creating new Section 307(c)(1) granting the Commission authority to determine licenses for particular classes of stations, including satellite space and earth stations).

<sup>43</sup> 47 CFR § 25.121(a).

<sup>44</sup> *Id.* For a discussion of this optional two-step process as it applies to potential market access requests by non-U.S. licensed space stations, see *infra*, Part III.A.2.e.

<sup>45</sup> *Part 25 Streamlining Order*, 30 FCC Rcd at 14717, para. 10.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

This two-step application process is completely optional, and, as an alternative, applicants may file a full application without first submitting a draft Coordination Request or posting the corresponding \$500,000 bond.<sup>48</sup> The Commission adopted a similar two-step application process for GSO FSS operation in “planned” frequency bands subject to Appendix 30B of the ITU Radio Regulations.<sup>49</sup> In contrast, the Commission stated that it would treat proponents of satellite operations that are subject to Appendices 30 and 30A of the ITU Radio Regulations somewhat differently. For these proponents, which include those proposing operations in the 12.2-12.7 GHz and 17.3-17.8 GHz frequency bands used for DBS service, the Commission would still review and forward their ITU filings in advance of a license application, but such review and forwarding would not afford any licensing status, as applications for DBS systems are not eligible for first-come, first-served processing.<sup>50</sup>

21. Our proposal to adopt first-come, first-served processing procedures for DBS applications changes this situation and ITU filings subject to Appendices 30 and 30A of the ITU Radio Regulations will not be forwarded to the ITU before a license application is filed with the Commission. However, adopting first-come, first-served processing also supports extending the optional two-step application process to these DBS filings. Thus, we propose to extend the two-step process for GSO FSS operations in unplanned bands to DBS operations in planned bands, and, in this respect, will treat ITU filings to modify an existing frequency assignment in the Region 2 Plan, to include a new frequency assignment in the Region 2 Plan, or to include a new or modified frequency assignment in the List of the Regions 1 and 3 Plan in the same manner as a Coordination Request filing for GSO FSS operation in non-planned bands.

22. Unlike Coordination Requests in non-planned bands, however, we propose to review a proposed filing under Appendices 30 and 30A prior to forwarding the filing to the ITU to ensure that it is compatible with other U.S. filings. This review is necessary to protect the rights of existing U.S. filings from being unduly eroded under the relevant ITU protection criteria by another U.S. filing. Accordingly, the party requesting a planned-band filing must either submit the results of an analysis demonstrating that the proposed operation will not “affect” any other U.S. filing under the relevant ITU criteria or, if another filing would be deemed affected, submit a letter signed by the affected operator (which may be the same as the operator requesting the new filing) that it consents to the new filing. This proposed review is consistent with our tentative conclusions above regarding the processing of all requests for DBS service. We seek comment on this proposal. We likewise propose to require applicants for DBS licenses using the two-step procedure to submit the application filing fee and a bond of \$500,000 with their applications and ITU filings. As noted above, in the FSS licensing framework, an applicant submission with the Commission under the first step of the optional two-step procedure must be accompanied by the application fee and a \$500,000 bond. The purpose of the application-stage bond is to deter speculation during the two-year period of queue priority before the applicant must submit a completed application.<sup>51</sup> We find that these considerations also apply to DBS licensees. We seek comment on this proposal.

**e. Non-U.S. Licensed Systems**

23. With the exception of the two-step processing procedure discussed above, we propose that procedures and requirements proposed for DBS service license applications also apply to requests to

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<sup>48</sup> For a space station license application to be complete and acceptable for filing, it must include submission of information that can be provided only at the point when the design of the satellite network has reached a relatively high level of development and detail. Thus, the two-step alternative option that requires a \$500,000 bond (instead of the one-step, traditional full-application filing process) was introduced to allow an applicant to file sooner and secure an earlier spot in the first-come-first-served queue.

<sup>49</sup> *Part 25 Streamlining Order*, 30 FCC Rcd at 14717, para. 10, 14733, paras. 46-47.

<sup>50</sup> *Id.* at 14732-33, para. 45.

<sup>51</sup> *Id.* at 14728, para. 32.

access the United States market by non-U.S. licensed space stations under our *DISCO II* framework.<sup>52</sup> We note that the Commission decided in the *DISCO II* proceeding that entities wishing to serve the United States with a non-U.S. satellite, including DBS satellites, must file the same information as applicants for a U.S. space station license, whether or not that satellite is already licensed by another administration.<sup>53</sup> Consequently, if we adopt a first-come, first-served licensing procedure for applicants for a U.S.-licensed DBS space station, operators of non-U.S. licensed DBS space station seeking U.S. market access<sup>54</sup> and entities filing earth station applications to access non-U.S. licensed DBS space stations must file the same information required under Section 25.114 of the Commission's rules.<sup>55</sup>

24. We further note that the United States took an exemption from the World Trade Organization's Basic Telecommunication Agreement for "one-way satellite transmission of DTH and DBS television services and digital audio services."<sup>56</sup> Thus, in order to serve the United States, foreign-licensed DBS systems must be found acceptable under the Effective Competitive Opportunities analysis the Commission adopted in our *DISCO II* proceeding in 1997 (ECO-Sat).<sup>57</sup> We do not intend to revisit any of these considerations, but merely propose that foreign DBS systems requesting market access to serve the United States will be considered on the same first-come, first-served basis as applications for authority to provide DBS services.<sup>58</sup>

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<sup>52</sup> See *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24098, para. 7 (1997) (*DISCO II*).

<sup>53</sup> *Id.* at 24175 at para. 190. *DISCO II* specifically said that foreign DBS operators seeking access to the United States must file the same information as U.S. applicants under Section 100.13, but that rule has since been eliminated as DBS applications are now filed in accordance with the general Part 25 satellite rules. See *Policies and Rules for the Direct Broadcast Satellite Service*, Report and Order, 17 FCC Rcd 11331, 11349-50, paras. 35-36 (2002).

<sup>54</sup> Foreign satellite operators file requests for U.S. market access in the form of a Petition for Declaratory Ruling by the space station operator or through an earth station application to communicate with a specific non-U.S.-licensed space station. 47 CFR § 25.137 (Requests for U.S. market access through non-U.S.-licensed space stations.)

<sup>55</sup> 47 CFR § 25.137(b).

<sup>56</sup> World Trade Organization, *Highlights of the basic telecommunication commitments and exemptions*, found at [https://www.wto.org/english/tratop\\_e/serv\\_e/telecom\\_e/telecom\\_highlights\\_commit\\_exempt\\_e.htm#exemptions](https://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_highlights_commit_exempt_e.htm#exemptions). See General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 284 (1999), 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994).

<sup>57</sup> *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094 (1997) ("*DISCO II Report and Order*"). Under the ECO-Sat analysis, entities seeking access to the U.S. market bear the burden of demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in the country in which the non-U.S. licensed space station is licensed and in all countries in which communications with the U.S. earth station will originate or terminate. 47 CFR § 25.137(a).

<sup>58</sup> The optional two-step application process described above is limited to situations where the United States submits filings with the ITU and is not available in situations where a non-U.S. licensed space station seeks access to the U.S. market using ITU filings made by other administrations. Parties have sought reconsideration of this limitation and have asked for a parallel process for non-U.S. licensed space stations. See Petition for Reconsideration of SES Americom, Inc. and New Skies Satellites B.V., IB Docket No. 12.267, filed Sept. 19, 2016. This petition for reconsideration is pending before the Commission. We do not seek to duplicate the consideration of the issues raised by the reconsideration petition in this proceeding, but we seek comment on any aspects of market access requests for DBS service that have not been raised in the reconsideration petition.

## B. Reduced Spacing for DBS Space Stations

25. We tentatively conclude that the public interest would be served by granting requests for new DBS service via space stations at orbital locations less than nine degrees apart, but that the public interest would not be served by adopting specific rules, different from those contained in Appendices 30 and 30A of the ITU Radio Regulations, for accommodating requests for new DBS systems at reduced-spacing orbital locations. Instead, such requests can be processed using the “first-come, first-served” procedures for DBS service proposed above.

26. Since 2002, the Commission has explored the possibility of approving requests for new DBS service in the United States from orbital locations spaced less than nine degrees apart.<sup>59</sup> Such reduced spacing could increase competition in DBS service by increasing the number of orbital locations from which DBS service could be provided into the United States. Reduced spacing, however, could also increase interference to existing DBS systems providing service in the United States, since the orbital spacing between satellites serving the same geographic area, combined with both the satellite transmit characteristics and receive earth station antenna performance, determines the amount of interference a DBS receive earth station will receive.<sup>60</sup> Accordingly, interference to existing DBS service will increase as orbital spacings are reduced unless the transmit characteristics of the satellites at reduced orbital spacings are limited to a level low enough not to cause interference to existing systems, or the receive earth station antenna performance of the existing DBS service subscribers is improved to accommodate additional interference from satellites at reduced orbital spacings, or both.

27. There has been a sharp disagreement between existing DBS service providers and proponents of satellites at reduced spacing locations on the question of whether to adopt specific rules, different from those contained in Appendices 30 and 30A of the ITU Radio Regulations, to accommodate such “tweener” applications. Proponents of reduced spacings state that new rules requiring existing DBS service providers to accommodate operations at reduced orbital spacings will give consumers a wider range of services and providers to choose from,<sup>61</sup> and that it is possible to expand DBS capacity in the United States without causing harmful interference to existing DBS services.<sup>62</sup> Existing DBS service providers oppose the adoption of such new rules or proposed benchmarks for coordination. First, they argue that authorizing DBS service at reduced orbital spacings would be unlikely to introduce new services or competition,<sup>63</sup> and that other spectrum is available for new entrants to provide video programming without requiring additional rules to make DBS service from reduced spacings more easily available.<sup>64</sup> Second, they state that the proposals made by proponents of reduced spacing for DBS service would degrade, or even eliminate, existing DBS services to millions of subscribers in the United States.<sup>65</sup>

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<sup>59</sup> See 2006 Notice, 21 FCC Rcd at 9452-53, paras. 16-18.

<sup>60</sup> *Id.*

<sup>61</sup> See, e.g., Reply Comments of SES Americom, Inc. (filed Jan. 25, 2007) (SES Reply) at 1.

<sup>62</sup> SES Reply at 8-13.

<sup>63</sup> Comments of DIRECTV, Inc. at 27 (filed Dec. 12, 2006) (DIRECTV Comments) (arguing that proponents of reduced spacing do not seek to offer their own services, but rather to sell capacity to existing DBS service providers).

<sup>64</sup> DIRECTV Comments at 27-28; Comments of EchoStar Satellite L.L.C. at (filed Dec. 12, 2006) (EchoStar Comments) at 7-9.

<sup>65</sup> DIRECTV Comments at 12-13 (stating that proposed tweener operations would substantially degrade or even preclude existing and future service by U.S. DBS operators); EchoStar Comments at 5-7 (arguing that less than nine-degree orbital spacing between DBS satellites serving the United States poses serious interference risks); Reply Comments of Telesat Canada (filed Jan. 25, 2007) (Telesat Reply) at 3 (stating that the impact of short-spaced DBS satellites on existing DBS systems could be “catastrophic”).

28. After review of the comments and pleadings filed in response to the *2006 Notice*, we tentatively conclude that the potential benefits of adopting additional rules requiring existing DBS service providers to accommodate operations at reduced orbital spacing are outweighed by the potential harms to existing subscribers to DBS service. As an initial matter, it is not clear that access to additional DBS orbital locations is needed to introduce new video programming services since DBS subscribership is dropping in the United States as the marketplace for the distribution of video programming over the Internet continues to grow<sup>66</sup> and other opportunities exist to provide new video programming services in the United States in several frequency bands already allocated for satellite services. These include the 17/24 GHz BSS “reverse” band, which is specifically allocated for the provision of video programming, as well as frequency bands allocated for Ka-band GSO FSS.<sup>67</sup> Furthermore, the proposals made by proponents for additional rules may require changes to the equipment currently used to provide DBS services to subscribers—such as requiring larger customer receive antennas and changes to space station designs—or would require existing DBS providers and their subscribers to accept more interference and service unavailability than is the case today.<sup>68</sup>

29. However, the record does show that it is possible to accommodate the provision of new DBS services at reduced orbital spacings under existing rules.<sup>69</sup> Specifically, our rules already allow us to consider requests for new DBS service at reduced orbital spacings if entities making such a request can coordinate their proposed operations with other U.S. DBS operators and secure agreements with other operators already having assignments in the ITU Region 2 Plans (or with prior requests for Plan modifications).<sup>70</sup> We propose that we will address such requests under these existing rules rather than adopt new rules.

30. This approach protects current DBS consumers from interference and degradation of their video reception, while at the same time allowing potential new DBS operators to demonstrate – through careful system design, advancing technology, and coordination with existing DBS systems – that new DBS systems can operate at orbital spacings of less than nine degrees without causing harmful interference to existing systems and their customers. It will also ensure that operations at reduced orbital

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<sup>66</sup> *18<sup>th</sup> Annual MPVD Competition Report*, 32 FCC Rcd at 570, para. 5, 621 para. 132.

<sup>67</sup> Ka-band includes the conventional Ka-band, which is defined as “the 18.3-18.8 GHz (space-to-Earth), 19.7-20.2 GHz (space-to-Earth), 28.35-28.6 GHz (Earth-to-space), and 29.25-30.0 GHz (Earth-to-space) frequency bands, which the Commission has designated as primary for GSO FSS operation.” 47 CFR § 25.103.

<sup>68</sup> SES Reply at 25 (proposing that the Commission authorize new DBS service at reduced spacing so long as the new system does not reduce the C/I of affected existing DBS systems below 19dB, or increase the unavailability of the affected existing DBS system by more than 10% or below 99.90%); Spectrum Five Reply at 6 (“Spectrum Five and others shows that a 10% relative increase in unavailability should be adopted as a benchmark for acceptable interference”).

<sup>69</sup> The Commission has, in fact, used its existing processes to grant requests for new DBS services using reduced spacings. See, e.g., *Spectrum Five Market Access Grant Order*, 21 FCC Rcd 14023 (IB 2006), applications for review denied, 23 FCC Rcd 3252 (2008), authorization cancelled on other grounds, 26 FCC Rcd 10448 (IB 2011) (cancelling authorization for failure to meet milestone), recon denied, 30 FCC Rcd. 12416 (IB 2015).

<sup>70</sup> *2006 Notice*, 21 FCC Rcd at 9458, para. 29 (stating that “current Commission rules can accommodate the filing of DBS applications that specify operations at locations other than the eight orbital slots assigned to the United States in the ITU Region 2 Plan (as specified in Appendices 30 and 30A of the ITU Radio Regulations.”) See also 47 CFR §§ 25.114(d)(13) (specifying the information an applicant for a DBS license must provide “if the proposed system’s technical characteristics differ from those specified in the Appendix 30 BSS Plans, the Appendix 30A feeder link Plans, Annex 5 to Appendix 30 or Annex 3 to Appendix 30A of the ITU Radio Regulations.”) and 25.148(f) (stating that “DBS operations must be in accordance with the sharing criteria and technical characteristics contained in Appendices 30 and 30A of the ITU’s Radio Regulations. Operation of systems using differing technical characteristics may be permitted, with adequate technical showing, and if a request has been made to the ITU to modify the appropriate Plans to include the system’s technical parameters.”).

separations will lead to the same levels of interference observed between two DBS systems operating nine degrees apart, with co-frequency, co-coverage operation, and nominal Appendix 30 power density levels. We recognize that this proposal will require mitigation measures by future operators at reduced orbital spacings, such as reduced power density levels or non-fully overlapping coverages. We tentatively conclude that such measures are more easily and appropriately implemented by future entrants than retroactively imposed on existing DBS operators and their subscribers.

31. We note however that the ITU Appendix 30 and 30A ITU rules do not govern the relationship between two DBS systems operating under U.S. ITU filings. We propose that the same ITU criteria be used to determine compatibility between a new DBS application with respect to a DBS system already in the processing queue or previously authorized, even when both systems are or will be operating under U.S. ITU filings.<sup>71</sup> If any of the frequency assignments of the system already in the queue or previously authorized is affected, according to the ITU criteria, the new DBS application can still be considered compatible with this system by submission of a letter signed by the affected operator indicating that it consents to the new application.

32. We seek comment on this approach. In particular, we seek any updates to the record regarding specific benefits or harms arising from adopting rules to require existing DBS service providers to accommodate requests to provide DBS service at reduced orbital spacings and may consider adopting such rules if the record demonstrates that doing so would serve the public interest.

#### C. DBS Licensing “Freeze”

33. The Commission imposed a “freeze” on requests for new DBS systems in 2005. The proposals we make in this *Second Notice* will, if adopted, resolve the issues that caused the Commission to impose that freeze. We therefore propose to lift the freeze and begin accepting new applications for DBS licenses after the effective date of rules adopted as a result of this *Second Notice*. We also propose that new applications or requests for U.S. market access be accepted only after a date specified in a public notice, which the International Bureau would release after the rules have become effective. We seek comment on these proposals.

#### D. Other Matters

34. The *2006 Notice* also sought comment on other issues related to the regulation of DBS service that we do not repeat in this *Second Notice*. These other issues relate to protection requirements among terrestrial Multichannel Video Distribution and Data Service (MVDDS) licensees and DBS operations at reduced spacings,<sup>72</sup> protection of DBS operations at reduced spacings from interference from NGSO FSS operations,<sup>73</sup> protection of mobile DBS receivers smaller than 45 cm in diameter,<sup>74</sup> and whether to establish a spectrum cap on existing DBS licensees.<sup>75</sup> We seek additional comment on these issues in light of developments since the *2006 Notice* and our tentative conclusions in this *Second Notice*.

### IV. PROCEDURAL MATTERS

35. *Ex Parte Rules – Permit-But-Disclose*. Pursuant to Section 1.1200(a) of the Commission’s rules, this *Notice* shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>76</sup> Persons making *ex parte* presentations must file a copy of any written

<sup>71</sup> We note in this respect that this is the approach taken in a similar situation when operations are being conducted in the ITU Appendix 30B frequencies. See 47 CFR §§ 25.110(b)(3)(ii) and 25.140(a)(3)(iv).

<sup>72</sup> *2006 Notice*, 21 FCC Rcd at 9465, paras. 53-54.

<sup>73</sup> *Id.* at 9465-66, paras. 55-58.

<sup>74</sup> *Id.* at 9467-68, paras. 59-61.

<sup>75</sup> *Id.* at 9568-69, paras. 62-63.

<sup>76</sup> 47 CFR § 1.200(a).

presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations or memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

36. *Comment Period and Procedures.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

37. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>77</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Notice of Proposed Rulemaking*. The analysis is found in Appendix B. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the *Notice* and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

38. *Paperwork Reduction Act.* This document contains proposed new and modified information collection requirements. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. § 3501-3502). In addition, pursuant to the Small Business Paperwork Reduction Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

## V. ORDERING CLAUSES

39. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j), this *Second Notice of Proposed Rulemaking* IS ADOPTED.

40. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this *Second Notice of Proposed Rulemaking*, including the initial regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>77</sup> See 5 U.S.C. § 603.

## APPENDIX A

## Proposed Rules

The Federal Communications Commission proposes to amend 47 CFR part 25, as follows:

**PART 25 – SATELLITE COMMUNICATIONS**

1. The authority citation for part 25 continues to read as follows:

Authority: Interprets or applies 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

2. Amend §25.110 by revising paragraph (b)(3) introductory text and by revising paragraphs (b)(3)(iii) and (b)(3)(iv) to read as follows:

**§ 25.110 Filing of applications, fees, and number of copies.**

\* \* \* \* \*

(b)(3) A license application for 17/24 GHz BSS space station operation, for GSO FSS space station operation, or for GSO space station operation subject to the provisions in Appendices 30 and 30A of the ITU Radio Regulations (incorporated by reference, *see* §25.108) may be submitted in two steps, as follows:

\* \* \* \* \*

(iii) An application for GSO space station operation subject to the provisions in Appendices 30 and 30A of the ITU Radio Regulations (incorporated by reference, *see* §25.108) may be initiated by submitting to the Commission, in accordance with the applicable provisions of part 1, subpart Y of this chapter, a draft ITU filing to: modify an existing frequency assignment in the Region 2 Plan; to include a new frequency assignment in the Region 2 Plan; or to include a new or modified frequency assignment in the List of the Regions 1 and 3 Plan, accompanied by a simplified Form 312 and a declaration of acceptance of ITU cost-recovery responsibility in accordance with §25.111(d). The simplified Form 312, Main Form submission must include the information required by items 1-17, 43, 45, and 46. In addition, the applicant must submit the results of an analysis demonstrating that no U.S. filing under Appendix 30 and 30A would be deemed affected by the proposed operation under the relevant ITU criteria or, for any affected filings, a letter signed by the affected operator that it consents to the new filing.

(iv) An application initiated pursuant to paragraphs (b)(3)(i), (b)(3)(ii) or (b)(3)(iii) of this section will be considered completed by the filing of an FCC Form 312 and the remaining information required in a complete license application, including the information required by §25.114, within two years of the date of submission of the initial application materials.

\* \* \* \* \*

3. Amend § 25.114 by revising paragraph (a)(3) to read as follows:

\* \* \* \* \*

(a)(3) For an application filed pursuant to the two-step procedure in §25.110(b)(3), the filing pursuant to §25.110(b)(3)(iv) must be submitted on FCC Form 312, Main Form and Schedule S, with attached exhibits as required by paragraph (d) of this section, and must constitute a comprehensive proposal.

\* \* \* \* \*

4. Amend § 25.121 by revising paragraph (a)(1) to read as follows:

(a) *License Term.*(1) Except for licenses for SDARS space stations and terrestrial repeaters and 17/24 GHz BSS space stations licensed as broadcast facilities, licenses for facilities governed by this part will be issued for a period of 15 years.

\* \* \* \* \*

5. Amend § 25.140 by revising title to read as follows:

**§ 25.140 Further requirements for license applications for GSO space station operation in the FSS, in the frequencies of the ITU Appendices 30 and 30A, and in the 17/24 GHz BSS.**

\* \* \* \* \*

6. Amend § 25.140 by adding new paragraph (a)(1)(vi) to read as follows:

(a)(1)(vi) In addition to the information required by §25.114, an applicant for a GSO space station operating in the frequencies of the ITU Appendices 30 and 30A (incorporated by reference, see §25.108) must provide a statement that the proposed operation will take into account the applicable requirements of these Appendices of the ITU Radio Regulations and a demonstration that it is compatible with other U.S. ITU filings under Appendices 30 and 30A or, for any affected filings, a letter signed by the affected operator indicating that it consents to the new application.

\* \* \* \* \*

7. Amend § 25.148 by removing and reserving paragraphs (b), (d) and (e).

8. Amend § 25.164 by revising paragraph (a) to read as follows:

(a) The recipient of an initial license for a GSO space station, other than a SDARS space station, granted on or after August 27, 2003, must launch the space station, position it in its assigned orbital location, and operate it in accordance with the station authorization no later than five years after the grant of the license, unless a different schedule is established by Title 47, Chapter I, or the Commission.

\* \* \* \* \*

9. Amend § 25.165 by revising paragraph (a) to read as follows:

(a) For all space station licenses issued after September 20, 2004, other than licenses for SDARS space stations and replacement space stations as defined in paragraph (e) of this section, the licensee must post a bond within 30 days of the grant of its license. Failure to post a bond will render the license null and void automatically.

\* \* \* \* \*

**APPENDIX B****Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Second Notice of Proposed Rulemaking (NPRM). We request written public comments on this IRFA. Commenters must identify their comments as responses to the IRFA and must file the comments by the deadlines for comments on the NPRM provided above in section IV.B. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>2</sup> In addition, summaries of the NPRM and IRFA will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. The NPRM seeks comment on several proposals relating to the Commission's rules and policies for licensing space stations in the Digital Broadcasting Satellite (DBS) Service. Adoption of the proposed changes would, among other things, provide a licensing system under which new licenses for DBS satellites in reduced spacing orbital slots would be processed according to the Commission's rules for geostationary orbit space stations in the Fixed-Satellite Service.

**B. Legal Basis**

3. The proposed action is authorized under sections 4(i), 303, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 316.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply**

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by adoption of proposed rules.<sup>4</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>5</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>6</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>7</sup> Below, we describe and estimate the number of small entity licensees that may be affected by adoption of the proposed rules.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996) (CWAAA).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> 5 U.S.C. § 604(a)(3).

<sup>5</sup> 5 U.S.C. § 601(6).

<sup>6</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

<sup>7</sup> Small Business Act, 15 U.S.C. § 632 (1996).

*Satellite Telecommunications and All Other Telecommunications*

5. The rules proposed in this NPRM would affect some providers of satellite telecommunications services, if adopted. Satellite telecommunications service providers include satellite and earth station operators. Since 2007, the SBA has recognized two census categories for satellite telecommunications firms: “Satellite Telecommunications” and “Other Telecommunications.” Under both categories, a business is considered small if it had \$32.5 million or less in annual receipts.<sup>8</sup>

6. The first category of Satellite Telecommunications “comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>9</sup> For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year. Of this total, 482 firms had annual receipts of under \$25 million.

7. The second category of Other Telecommunications is comprised of entities “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”<sup>10</sup> For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.<sup>11</sup> Of this total, 2,346 firms had annual receipts of under \$25 million.<sup>12</sup> We anticipate that some of these “Other Telecommunications firms,” which are small entities, are earth station applicants/licensees that might be affected if our proposed rule changes are adopted.

8. We anticipate that our proposed rule changes may have an impact on earth station and space station applicants and licensees. Space station applicants and licensees, however, rarely qualify under the definition of a small entity. Generally, space stations cost hundreds of millions of dollars to construct, launch, and operate. Consequently, we do not anticipate that any space station operators are small entities that would be affected by our proposed actions.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

9. The NPRM proposes and seeks comment on several rule changes that would affect compliance requirements for earth station and space station operators. Most proposed changes, however, are directed at space station applicants and licensees. As noted above, these parties rarely qualify as small entities.

10. For example, we propose to allow additional uses of certain frequencies within the 17.2-17.7 GHz band, subject to compliance with technical limits designed to protect other users of the bands. We also seek comment on revised or new technical standards to promote sharing among DBS systems in reduced orbital spacings.

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<sup>8</sup> See 13 CFR § 121.201, NAICS codes 517410, 517919.

<sup>9</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517410 Satellite Telecommunications.”

<sup>10</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517919 Other Telecommunications.”

<sup>11</sup> See 13 CFR § 121.201, NAICS code 517919.

<sup>12</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517919” (issued Nov. 2010).

11. We also propose modified rules for satellite system implementation to provide additional flexibility to operators. In total, the proposals and questions in the NPRM are designed to achieve the Commission's mandate to regulate in the public interest while imposing the lowest necessary burden on all affected parties, including small entities.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

12. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>13</sup>

13. The NPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the NPRM.

14. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding.

15. In this NPRM, the Commission invites comment on means to minimize negative economic impacts on applicants and licensees, including small entities, by permitting DBS space stations in orbital locations between the currently authorized orbital locations. Overall, the proposals in the NPRM seek to increase flexibility for DBS applicants and licensees and reduce burdens, while maintaining adequate protections against interference.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

16. None.

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<sup>13</sup> 5 U.S.C. § 603(c)(1)-(4).